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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Xfinity Mobile, et al.,

10 Plaintiffs,

11 v.

12 Globalgurutech LLC, et al.,

13 Defendants.
14

No. CV-22-01950-PHX-SMB

ORDER

15 Pending before the Court is Plaintiffs Comcast OTR1, LLC, Comcast Cable
16 Communications LLC, Xfinity Mobile brand, and Comcast Corporation's (collectively
17 "Plaintiffs") Motion for Expedited Discovery. (Doc. 16.) Defendants GlobalGuruTech,
18 LLC, Guru Holdings LLC, and Jakob Zahara (collectively "Defendants") filed a Response
19 (Doc. 21), and Plaintiffs filed a Reply (Doc. 26). The Court will exercise its discretion to
20 resolve this motion without oral argument. *See* LRCiv 7.2(f) ("The Court may decide
21 motions without oral argument."). After reviewing the briefing and relevant law, the Court
22 will deny Plaintiffs' Motion for Expedited Discovery for the following reasons.

23 **I. BACKGROUND**

24 This case is about Defendants' alleged scheme to sell improperly procured cell
25 phones. (*See* Doc. 16 at 4–5.) Nearly two weeks after filing the Complaint, Plaintiffs
26 moved for expedited discovery. (*See* Docs. 1; 16.) Plaintiffs seek the Court's permission
27 to serve non-party subpoenas on third parties Plaintiffs believe are in possession of digital
28 information that they are under no duty to preserve. (Doc. 16 at 1.)

II. LEGAL STANDARD

Parties generally may not seek discovery before a Rule 26(f) conference unless otherwise authorized by the Federal Rules of Civil Procedure, by stipulation, or by court order. *See* Fed. R. Civ. P. 26(d)(1). Courts may authorize early discovery “in the interests of justice,” *see* Fed. R. Civ. P. 26(d)(3) and “where good cause is shown,” *see Mach 1 Air Servs., Inc. v. Mainfreight, Inc.*, No. CV-14-01444-PHX-SPL, 2015 WL 11181334, at *1 (D. Ariz. Mar. 5, 2015). “Good cause may be found where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *Semitoil, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002). Among other factors, courts consider (1) whether a preliminary injunction is pending; (2) the breadth and purpose of the discovery request; (3) the burden on the defendants to comply with such a request; and (4) how far in advance of the typical discovery process the request was made. *Am. LegalNet, Inc. v. Davis*, 673 F. Supp. 2d 1063, 1067 (C.D. Cal. 2009)).

III. DISCUSSION

Here, Plaintiffs want to serve non-party subpoenas under Rule 45 for the asserted purpose of preserving digital information that those third parties have no current obligation to preserve. (Doc. 16 at 1, 12.) Those third parties include FedEx, UPS, DHL, Amazon, eBay, PayPal, and Craigslist. (*Id.* at 12.) Defendants argue Plaintiffs’ request is insufficiently tailored to the parties to be subpoenaed because there is no evidence that Defendants conduct business through FedEx, DHL, Amazon, eBay, or Craigslist. (*Id.*) Defendants also argue that Plaintiffs’ request is overbroad because Plaintiffs have not set forth the specific information it wants to subpoena. (Doc. 21 at 8.) Plaintiffs request “[a]t the very least” to serve the subpoenas attached to their Reply. (*See* Doc. 26 at 7, 11 (UPS), 16 (Zelle), 21 (PayPal).)

The Court notes that Plaintiffs have not filed a motion for a preliminary injunction. In their Motion, Plaintiffs state that expedited discovery would inform them of whether it would file such a motion. (Doc. 16 at 11.) A party’s “mere inclination” to seek a

1 preliminary injunction is generally insufficient to justify expedited discovery. *Mach 1*,
2 2015 WL 11181334, at *1 (citing *Facebook, Inc. v. Various, Inc.*, No. C-11-01805-SBA
3 (DMR), 2011 WL 2437433, at *3 (N.D. Cal. June 17, 2011)). Plaintiffs do assert they will
4 be irreparably harmed if the companies cited fail to preserve the information they seek to
5 subpoena. (Doc. 16 at 9.) But as discussed below, Plaintiffs do not specify the information
6 they seek. Any harm Plaintiffs are likely to suffer is thus attenuated and speculative. The
7 Court finds this factor favors denying Plaintiffs' request.

8 The Court generally agrees with Defendants that Plaintiffs' request is overbroad.
9 The Complaint contains no allegations that Defendants have used or are using FedEx,
10 DHL, Amazon, eBay, or Craigslist to carry out the alleged scheme. In contrast, Defendants
11 acknowledge the evidentiary basis for Defendants' using UPS and PayPal as part of their
12 business. (Doc. 21 at 8.) Plaintiffs also do not set forth what information it will ultimately
13 subpoena. (*See* Doc. 16 at 12.) They merely assert that "[t]here is vital information
14 concerning the extent and methods of Defendants' unlawful activities in the possession of
15 third parties . . . who are being used by Defendants to perpetrate their Scheme." (*Id.*) But
16 Plaintiffs never explain what information it seeks, except listing some specific data in three
17 draft subpoenas attached to Plaintiffs' Reply. *See Davis*, 673 F. Supp. 2d at 1067 (noting
18 the plaintiff did not identify the topics to be addressed in the early deposition). Defendants
19 highlight Plaintiffs' citing Facebook and LinkedIn's—two companies not implicated by
20 the Complaint—privacy policies to illustrate the potential risk of data erasure. (Doc. 21 at
21 9.) The Court agrees that these irrelevant policies do little if anything to establish a risk of
22 spoliation. Taken as a whole, Plaintiffs seek to serve subpoenas on many third parties—
23 some of which are not alleged to have facilitated Defendants' alleged scheme—for
24 unspecified digital information, based on two irrelevant companies' privacy policies. The
25 Court finds that the breadth and purpose of Plaintiffs' request favors denial.

26 Plaintiffs' Motion is catered to third parties, which means Defendants would carry
27 no burden to comply with Plaintiffs' request. This factor thus favors granting Plaintiffs'
28 request. Plaintiffs made this request before Defendants responded to the Complaint via

1 their Motion to Dismiss. The Court does not find the timing of Plaintiffs' request to favor
2 or disfavor granting their request.

3 After considering all relevant factors, the Court will deny Plaintiffs' Motion.
4 Plaintiffs offer only mere speculation as to whether the third parties in their Motion have
5 information that would be relevant to their claims. Furthermore, Plaintiffs did not tailor
6 their requests except when preparing an exhibit to their Reply. Any burden to Defendants
7 would be minimal, but the Court nonetheless finds no good cause to permit Plaintiffs to
8 conduct expedited third party discovery.

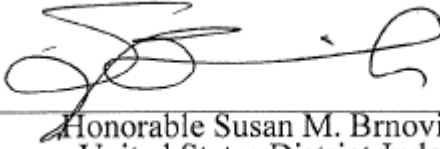
9 **IV. CONCLUSION**

10 Accordingly,

11 **IT IS ORDERED** denying Plaintiffs' Motion for Expedited Discovery. (Doc. 16.)

12 Dated this 8th day of June, 2023.

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Honorable Susan M. Brnovich
United States District Judge